
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SHELLY WILKINSON,

Movant,

versus

UNITED STATES OF AMERICA,

Respondent.

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CIVIL ACTION NO. 1:21-CV-230

**MEMORANDUM ORDER ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Shelly Wilkinson, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this motion to vacate. The magistrate judge recommends the motion to vacate be denied. To date, the parties have not filed objections to the report.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. After careful review, the court finds that the findings of fact and conclusions of law of the United States Magistrate Judge are correct.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge (#9) is **ADOPTED**. A final judgment will be entered denying the motion to vacate.

Furthermore, the court is of the opinion movant is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need not establish that she would prevail on the merits. Rather, she must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the movant has not shown that the issue of whether her motion to vacate is meritorious is subject to debate among jurists of reason. The factual and legal questions raised by movant have been consistently resolved adversely to her position and the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not issue in this matter.

Signed this date

Jun 10, 2024



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE